

MONITORING THE MED BOARD

--*Legislative Hearings Set*

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[BPM is the unit of the Medical Board of California (MBC), Department of Consumer Affairs (DCA), that administers licensing of DPMs under the State Medical Practice Act.]

Sacramento, January 12--Governor Schwarzenegger has grabbed the headlines, and we'll report next time on his proposed conversion of licensing boards into DCA programs as more details are fleshed out. Into the mix, however, will be the MBC Monitor's Report--this issue's topic. MBC Enforcement Monitor Julie D'Angelo Fellmeth, JD submitted her initial, statute-mandated report November 1. Within the week, MBC voted to support increasing its \$600 biennial renewal fee up to \$800.

Fellmeth says the boost, the amount DPMs began paying in 1990 to strengthen consumer protection (and a \$100 less than you pay today), is needed to cover inflation and the rehiring of enforcement staff lost during the Davis hiring freeze. The Joint Committee on Boards, Commissions and Consumer Protection plans a January 25 hearing, at which the California Medical Association (CMA) may take issue with many Monitor recommendations including this one.

For her part, Senator Liz Figueroa, the Joint Committee chair, said after studying the report, "It's amazing. We knew there were some serious problems with the Medical Board, but not to this extent."

Lodes of Info

BPM Legal Counsel George Ritter calls the Monitor's 370-page *Initial Report* "a proverbial gold mine of information. Its analysis, particularly in the information disclosure area is first rate."

Reports on the State bureaucracy aren't on your Amazon Wish List? Ms. Fellmeth, of the University of San Diego's Center for Public Interest Law (CPIL), knows that, and sums it all up in a handy Executive Summary: bpm.ca.gov/new/index.htm

This is indeed a trove on what one proud, former Medical Board Member calls "the best medical board in the country." You might question his assessment after scanning Fellmeth's findings, but a positive response seems promised to yet another strong prescription of more modern management.

Please do scan the Executive Summary. Excerpts here cover only a few highlights relating to recent discussion at podiatric medical specialty meetings.

Fellmeth is scheduled to address BPM's January 28 public meeting in Sacramento. CPMA will be there monitoring her, as well as Department of Health Services Deputy Director for Licensing & Certification Brenda Klutz. Both will appear in the morning.

Monitor Excerpts--Emphasis Added

Overall, the enforcement process **takes too long** to protect the public.

MBC **resources are inadequate**. In recent years, the Medical Board has suffered a **devastating combination of blows** to its funding and staffing, including: The statewide hiring freeze of 2001–03, and resulting position losses, cost MBC a total of 44.8 staff positions, including 29 enforcement program positions. In 2004, MBC’s enforcement program staff consists of 20 fewer positions than it had in 1991–92, when it received 22% fewer complaints and took 75% fewer disciplinary actions.

For many years, the Medical Board has permitted the **Diversion Program** to effectively function **in a vacuum**, separate from overall MBC management, resulting in breakdowns in key Diversion functions that pose a **risk not only to the public but also to the physicians** participating in the Program. The administration of the Diversion Program must be more fully integrated into MBC management.

- ***Initial Recommendations***

*Recommendation #1: **Lost enforcement positions should be reinstated.***

*Recommendation #2: **Renewal fees should be increased.*** The statutory ceiling on the Board’s \$600 biennial license renewal fee should be increased to \$800 to cover inflation, restoration of lost enforcement positions, and increased costs of doing business.

*Recommendation #3: DCA and MBC must **upgrade their management information** systems.*

*Recommendation #4: MBC should regularly update all enforcement manuals, and HQE should **draft a policy and procedure manual.***

The governance of the Diversion Program must be transformed into an accountable structure with a sufficient number of staff who are able and willing to implement the Division of Medical Quality’s (DMQ’s) instructions, with monitoring mechanisms that provide DMQ with an ability to meaningfully oversee both staff and participant compliance with policies and procedures (preferably statutes and regulations) that it has approved and the Program’s response to specific cases. If this structure is not possible, or **if DMQ is unwilling to fully design and participate in it, then the Diversion Program should be abolished** and the licenses of impaired physicians should be suspended until they prove that they are capable of safe medical practice.

*Recommendation #56: Based on the information contained in this and prior reports on the Diversion Program, the Medical Board must **reevaluate whether the “diversion” concept is feasible, possible, and protective of the public interest.*** The Medical Board’s paramount priority is public protection. It is unclear why a board charged with public protection as its paramount priority would permit physicians who are addicted to drugs or alcohol to practice medicine before they have recovered from that addiction. If such a board believes that impaired but recovering physicians should be permitted to practice medicine while they are in recovery and susceptible to relapse, that board must insist on

comprehensive monitoring mechanisms which are demonstrably effective in detecting both relapse and pre-relapse behaviors, to protect both the participant and the public at large.

According to the clear findings in three Auditor General reports and this report, this Board's Diversion Program has never consistently — if ever — had those monitoring mechanisms in place in all cases and at all times, thus **exposing the public to unacceptable risk** in violation of Business and Professions Code sections 2001.1, 2229, and 2340.

The Medical Board must determine whether it is possible to develop, resource, and ensure the effective monitoring mechanisms demanded by state law, or whether the public interest demands that the licenses of impaired physicians be suspended during periods of impairment.

- *Conclusion*

To be effective, a report such as this must focus for the most part on the shortcomings in the system under scrutiny. However, the Monitor also notes that there is much that is good at the Medical Board of California and the Health Quality Enforcement (HQE) Section of the Attorney General's Office, and that the Monitor has consistently encountered a spirit of cooperation and a commitment to progress among the public servants who undertake this important duty.

In particular, the Monitor has found a **dedicated and hardworking MBC staff** who have diligently maintained their mission in the face of substantial resource reductions, and an equally dedicated and skilled staff of attorneys in HQE, who have also labored to do more with less. MBC's new Executive Director **David Thornton** brings in-depth knowledge of enforcement processes and impressive experience and management skill to this post, and he is rapidly responding to the organizational problems facing MBC, including many of those described in this Initial Report.

Both the Board and HQE are blessed with experienced senior managers with extensive system knowledge and a **highly constructive attitude toward institutional change** and improvement. The Board itself is conscientious and public-spirited, with outstanding professional credentials and demonstrated commitment to public protection.

To help promote and document such improvements, the MBC Enforcement Monitor will continue to work closely for the statutory term with the Legislature, the Department of Consumer Affairs, MBC, and HQE and their respective managements and staffs, the medical community, and the public whose protection is the agency's central mandate.

Quote of the Month

"If you are practicing medicine appropriately, don't worry. We are not behind every bush and tree." --**Joan Jerzak, Enforcement Chief, Medical Board of California**

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